

UNITED STATES OF AMERICA,

Plaintiff,

vs.

XAVER MONTEZ BOSTON,

Defendant.

THIS MATTER is before the Court on its own motion following the filing of the Government’s Motion to Dismiss Petitioner’s Motion to Vacate pursuant to 28 U.S.C. § 2255 [Doc. 142].

The Court notifies Defendant that, in accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Defendant has a right to respond to the Government’s Motion to Dismiss his § 2255 Motion to Vacate.¹ The Court also advises Defendant that failure to file a timely and persuasive response will likely result in the Court granting the relief that the Government seeks in the Motion to Dismiss.

IT IS, THEREFORE, ORDERED that Defendant shall respond to the pending Motion to Dismiss no later than **twenty-one (21) days** from entry of this Order. Failure to file a timely

¹ The Fourth Circuit did not hold in Roseboro that such notice is required for motions to dismiss. Rather, the Fourth Circuit's discussion in Roseboro regarding notice was directed to summary judgment motions. See Roseboro, 528 F.2d at 310 ("We agree with the plaintiff, however, that there is another side to the coin which requires that the plaintiff be advised of his right to file counter affidavits or other responsive material and alerted to the fact that his failure to so respond might result in the entry of summary judgment against him."); see also Norman v. Taylor, 25 F.3d 1259, 1261 (4th Cir. 1994) ("In Roseboro[], this circuit held that pro se plaintiffs must be advised that their failure to file responsive material when a defendant moves for summary judgment may well result in entry of summary judgment against them."), *abrogated on other grounds by Wilkins v. Gaddy*, 559 U.S. 34 (2010). Nevertheless, courts routinely issue Roseboro notices for motions to dismiss, and the Court does so here.

and persuasive response will likely result in the Court granting the relief that the Government seeks in the Motion to Dismiss.

IT IS SO ORDERED.

Signed: November 13, 2024

A handwritten signature in black ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

